UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

ALBERT JOHNSON,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**Civil No. 02-73-P-H**
	)	
SPENCER PRESS OF MAINE, ET AL.,	)	
	)	
	)	
DEFENDANTS	)	

ORDER REJECTING RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

The United States Magistrate Judge filed with the court on October 31, 2002, with copies to counsel, his Recommended Decision on Defendants' Motion to Amend. The defendants filed an objection to the Recommended Decision on November 12, 2002. I have reviewed and considered the Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Recommended Decision; and I reject the recommendations of the United States Magistrate Judge. The defendants' motion to amend their answer is **GRANTED**.

The Complaint in this case was filed on April 4, 2002. On September 9, 2002, the defendants filed their motion to amend their answer to add an affirmative defense. The Scheduling Order (entered on May 20, 2002) had set a deadline of July 8, 2002, for such amendments. The discovery deadline then was September 23, 2002. (It was later extended to October 28, 2002.)

The defendants' motion was occasioned by a United States Supreme Court decision on June 10, 2002. That decision, National Railroad Passenger Corp. v. Morgan, 122 S. Ct. 2061, 2068 (2002), eliminated the affirmative defense on which the defendants had been depending, and prompted the defendants to assert new affirmative defenses that previously had seemed unnecessary. It would be pleasant to believe that every lawyer reads every Supreme Court decision the day it is rendered, and immediately realizes its implication for every case for which he or she is responsible, but the reality of life and practice does not meet that standard. Although ninety days and this court's deadline both passed before the defendants filed their motion, the amendment was not so tardy as to cause inevitable prejudice to the plaintiff: the discovery period was still open and, indeed, the witnesses in question had not then been deposed. Even now, trial is not scheduled before January 2003. I conclude that under the liberal standards of Fed. R. Civ. P. 15 ("leave shall be freely given when justice so requires"), the better course is to allow the amendment. If further discovery is needed as a result, the discovery period is reopened for a period of thirty days; if the amendment causes a need for additional dispositive motion filings, a party can request appropriate permission. **SO ORDERED.**

DATED: DECEMBER 4, 2002.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE